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## Brazil

## Biotechnology

## Provisional Measure for 2004/2005 Biotech Soybean Planting

## 2004

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**Report Highlights:**

The government was forced to issue another Provisional Measure to address the planting of the 2004/2005-soybean crop. This Provisional Measure was necessary in order to avoid a major disruption of the market because the Brazilian Congress failed to pass the new Biosafety Bill before the planting season.

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<b>SUMMARY .....</b>	<b>2</b>
<b>New Regulation for the 2004/05 Biotech Soybean Crop .....</b>	<b>2</b>
<b>Attachment 1: Provisional Measure No. 223/2004 (Informal Translation) .....</b>	<b>3</b>
<b>Attachment 2: Glossary of Terms and Abbreviations .....</b>	<b>6</b>

## SUMMARY

This report provides a preliminary analysis of the most recent federal government regulation regarding the approval of biotech soybeans for the 2004/2005-crop year. It also provides an informal translation of the new regulation and comments on the reaction of farmers and other institutions.

### New Regulation for the 2004/05 Biotech Soybean Crop

The Brazilian government was caught again by nature's time frame (the 2004/2005 crop year begins officially in October 2004). Farmers began planting in early October for the so-called "summer crop" (which covers the most important annual crops such as rice, corn, cotton, and soybeans). Because Congress failed to pass the proposed Biosafety Bill (already approved by the Senate, but not yet by the House), the federal government was forced to issue another Provisional Measure (MP, in Portuguese. Please see glossary for a definition of a MP) allowing planting and commercialization of the 2004/05 soybean crop.

MP Number 223 was signed by President Lula on October 14 and published in the Brazilian equivalent of the Federal Register on the following day. Because of errors in the original text, it was republished on October 18, 2004. The MP allows for the marketing of the biotech soybean crop until January 31, 2006, but this period can be extended by 60 days. The measure also prohibits the sale of biotech soybean from the 2004/05 harvest for use as seed. As with last year's MP, all producers using Biotech soybean seed must register and sign a "Declaration of Commitment, Responsibility, and Agreement of Conduct" (TCRAC, in Portuguese). Without signing this Declaration, producers will not be allowed access to production financing.

President Lula held until the last minute the release of another Provisional Measure, (the third one during his administration) because he was expecting Congress to enact the new Biosafety Bill. Although the Senate approved the bill and it is now back in the House, its final approval by the Congress is not expected until next year. In his announced of the Provisional Measure, signed by the President and the Minister of Agriculture, he explained the importance of the soybean crop to the Brazilian agriculture and livestock sector, and the negative externalities for the next soybean crop year (2004/2005), such as a drop in market prices and increased production

costs, which can have an adverse impact on the development of the crop in Brazil. He also officially declared that last year 2.8 million hectares of biotech soybeans were planted in Brazil with a total production of 4.1 million metric tons. Because of the proximity of the planting season and the impact on productivity due to delays in planting, the Minister of Agriculture justified the release of another Provisional Measure.

The release by the President's office of the new MP for biotech soybeans came after an intense battle between the Ministry of Environment and the Ministry of Agriculture regarding productivity and disruption of the soybean market and its impact on the Brazilian livestock sector.

Although most farmer organizations applauded the release of the new Provisional Measure, the following amendments to the MP are requested:

- a) Extension of the deadline for 180 days from January 31, 2006 for the marketing of the 2004/2005 biotech soybean crop;
- b) Extension of the period for signing the Declaration foreseen under article three of the Provisional Measure;
- c) Elimination of article five, which prohibits the sale of biotech seeds from the current crop (2003/2004). Because of this article, the Governor of Parana state is prohibiting sales of biotech seeds in his state and continues to place restrictions on exports of biotech soybeans through the Port of Parana, which is also affecting Paraguay.

Congress already received 280 proposals for amendments to Provisional Measure Number 223, which indicates that the battle will be intense in the Congress.

The two most important NGOs against biotech soybeans in Brazil – Greenpeace and IDEC, will challenge again another release of a Provisional Measure to resolve the planting of the soybean crop. They argue that it is against the terms of the Federal Constitution, mostly as it relates to the lack of environmental impact studies and the contraband of biotech soybean seeds. The Consumer Defense Institute (IDEC) is now challenging the federal government with a joint campaign with consumer groups from other countries to reject Brazilian exports of biotech soybeans.

A recent Pool released by an influential daily in Brazil concluded that 57 percent of Brazilian consumers responded that would eat biotech products, while 33 percent would not, 7 percent may, and 3 percent have no opinion.

**Attachment 1: Provisional Measure No. 223/2004 (Informal Translation)**

*Establishes the rules for the planting and marketing of the 2004/2005-biotech soybean crop and provides other measures.*

THE PRESIDENT OF BRAZIL, in the exercise of the authority conferred upon him by Article 62 of the Federal Constitution, adopts the following Provisional Measure, with the force of law:

Article One. The seeds of the 2003/2004 biotech soybean crop, set aside by producers for their own use, in accordance to the terms of Article Two, Clause XLIII, of Law Number 10,711, of August 5, 2003, which are to be planted until December 31, 2004, are not subject to the provisions of clauses:

I – clause one and two of Article 8 and 10, of Law Number 6,938, of August 31, 1981, relative to the genetically modified species foreseen under code 20 of Annex VIII;

II – of Law Number 8,974, of January 5, 1995, with the alterations of the Provisional Measure Number 2,191-9, of August 23, 2001; and

III – of Article 5, of Law Number 10,814, of December 15, 2003, which prohibited the planting of biotech products.

Sole paragraph – The marketing of the 2003/2004-biotech soybean crop as seed and use as seed in farms outside of the state where it was produced is prohibited.

Article Two. The provisions of Law Number 10,688, of June 13, 2003, apply to the soybean harvest from the seeds referred in the article one of this MP, and the marketing of this crop is permitted until January 31, 2006, inclusive.

Paragraph One - The deadline for marketing established in this article may be extended 60 (sixty) days by means of an act of the government.

Paragraph Two - The remaining soybean stock after the date established by this article, with cleaning of the warehouse spaces complete prior to the 2005/2006-soybean harvest.

Article Three. Those producers under the provisions of article one of this MP, except for the provisions under articles 3 and 4 of Law Number 10,688 of 2003, may only plant and market the 2004/2005 soybean crop if they sign the declaration of Commitment, Responsibility, and Agreement of Conduct, as per this regulation, observing the legal and regulatory rules in force.

Sole paragraph. The Declaration of Commitment, Responsibility, and Agreement of Conduct, which is of exclusive use of farmers and federal agencies and entities, must be signed by December 31, 2004, and filed with

the agencies of the Brazilian Post Office Service, Caixa Econômica Federal or Banco do Brasil.

Article Four. The biotech soybean producer who does not sign the Declaration of Commitment, Responsibility, and Agreement of Conduct as foreseen in article three will be prohibited from obtaining loans and financing from official credit institutions, under National Rural Credit System - SNCR, will not have access to fiscal or credit incentives, and will not be admitted to participate in programs including credit negotiations or parceling of debts regarding taxes and fees established by the federal government.

Paragraph One – For the purpose of obtaining loans or financing from institutions under the National Rural Credit System - SNCR, the non-biotech soybean producer who is not under the provisions of article four of Law Number 10,814 of 2003, or who does not present invoices for the purchases of certified seeds, or who does not present a certification of soybeans to be used as seeds, must sign a simplified declaration of “Conventional Soybean Producer”.

Paragraph Two – For the purpose of this Provisional Measure, conventional soybeans is defined as that obtained from seeds not genetically modified.

Article Five. The planting and marketing of seeds from the 2004/2005-biotech soybean crop is prohibited.

Article Six. With consideration for the penalties foreseen in the legislation in force, the producers of biotech soybeans who cause damages to the environment and to third parties, including those damages caused by contamination with cross-breeding, he or she, will be held responsible for indemnity or full compensation for the damage, regardless the existence of guilty.

Article Seven. For the 2004/2005 soybean crop, it is authorized the registration of biotech soybean varieties, under the National Registry of Cultivars, according to the terms of Law Number 10,711 of August 5, 2003, but marketing of seeds is prohibited.

Paragraph One - The Ministry of Agriculture, Livestock and Supply and the Ministry of the Environment will monitor the multiplication of seeds foreseen in this article and will maintain strict control of production and stocks.

Paragraph Two - The prohibition foreseen in this article will remain until the approval of a specific legislation for biotech soybeans.

Article Eight. The Commission referred in article 15 of Law Number 10,814 of 2003 will monitor and supervise the compliance of the provisions of this Provisional Measure.

Article Nine. The fine referred in article seven of Law Number 10,688, of June 13, 2003, will be levied in those cases of violation as provided in this Provisional Measure and in the Declaration of Commitment, Responsibility,

and Agreement of Conduct, as stated in article three of this Provisional Measure, and by those producers covered under the provisions of article one.

Article Ten. For the purposes of this Provisional Measure, articles 4, 6, 7, 10 and 11 of Law Number 10,814 of 2003 will apply.

Article Eleven. This Provisional Measure will enter into force on the date of its publication.

Brasília, October 14, 2004; 183rd year of the Independence and 116th year of the Republic.

LUIZ INÁCIO LULA DA SILVA

Roberto Rodrigues

Note: This text does not replace the text published in Brazil's Diario Oficial on October 15, 2004 and republished in the Diario Oficial of October 18, 2004.

**Attachment 2: Glossary of Terms and Abbreviations**

ABIA - Brazilian Association of Food Industries, based in Sao Paulo.

ADIN - Direct Action of Unconstitutionality. A legal instrument used to challenge laws or regulations that are considered unconstitutional, in the Supreme Court.

ANVISA - Agency for Sanitary Surveillance, Ministry of Health.

ANBIO - Brazilian Association of Biotechnology, based in Rio de Janeiro.

CIB - Conselho de Informacoes de Biotecnologia (Biotechnology Information Council). Non-profit private organization formed by major multinational biotech companies, Brazilian Association of Seed Producers, Brazilian cooperatives, and the Rural Brazilian Society.

CTNBio - National Technical Commission on Biosafety, created by Law 8,974 of January 5, 1995 which provides the legal framework and sets the standards and means of production, importation, manipulation, transportation, marketing, and consumption of genetically modified organisms. Presidential Decree Number 1,752 of December 20, 1995 also provides the regulatory framework under which CTNBio operates. In addition, Provisional Measure 2,137 of December 28, 2000 added and altered some clauses of Law 8,974/95 to clearly define the role of CTNBIO, which is under the authority of the Ministry of Science and Technology.

DJ - Decisao Judicial. Sentence. Final Decision Rule.

Decreto - Executive Order (only issued by the President)

DO - Diario Oficial. Official Gazette (Brazil's equivalent of the United States Federal Register). Any law or regulation to become effective in Brazil must be published in the Diario Oficial.

EC - Emenda Constitucional (Constitutional Amendment).

EIA-RIMA - Environmental Impact Study and Report of the Impact on the Environment.

Biotech Products - Genetically Modified Organisms. Transgenics.

IBAMA – Brazilian Institute of Environment and Renewable Resources. An agency of the Ministry of the Environment.

IDEC - Brazilian Consumer Protection Institute, based in Sao Paulo.

IP - Preservacao de Identidade (Identity Preservation)

Liminar - Injunction. Temporary Restraining Order. Writ.

MP - Medida Provisoria (Provisional Measure). It is an act by the President, under the powers and privileges granted to him by the Brazilian Constitution. It has the force of a law, until Congress reviews and gives final approval, and then, becomes a full law. The new Constitutional Amendment for the edition and dealing of Provisional Measures was set September 11, 2001. As the previous rule, Mps were issued and required congressional review within 30 days. If congress failed to review and approve it, the President could reissue the MPs indefinitely. With the new rules, Congress has 60 days to review the Mps. If Congress fails to review and approve, Mps can only be reissued for another 60-day period only. Also, the MP reissued for the second and last time becomes the first item in the Congress voting list, blocking any other plenary voting.

MPF - Ministerio Publico Federal - Public Prosecution Service. Independent federal body with the primary role of providing citizens with a secure means to fight in the courts when the law is violated, or there is abuse of authority.

MAPA - Ministry of Agriculture, Livestock, and Food Supply

MCT - Ministry of Science and Technology

MMA - Ministry of the Environment

MST - Movimento dos Trabalhadores Sem-Terra (Landless Workers Movement)

Parecer - Opinion. Judgment. View. Legal Opinion

PC - Parecer Conclusivo - Conclusive View.

Portaria - Directive (Administrative rule), issued by the Ministers

Procurador da Republica - Attorney General

Promotor - Prosecuting Attorney; Public Prosecutor

RET - Special Temporary Registration. RET is issued by the Ministry of Agriculture, Livestock, and Food Supply (MAPA) for agricultural chemicals (pesticides/herbicide), based on Decree Number 98,816/90. A company (Brazilian or foreign) that needs to register a pesticide or herbicide in Brazil files a request with the MAPA, which sends the request to the Ministry of Health (for their opinion on toxicity), and to the Ministry of Environment (for their opinion on environmental impact). The request, then returns to MAPA for final approval and issuance of the final registry number.

TCRAC – Declaration of Commitment, Responsibility, and Agreement of Conduct. It is a mandatory contract to be signed by the producer that will plant biotech soybean seed. For the 2004/2005 soybean crop, the TCRAC is regulated by the executive Order Numberer 5,250, published in Brazil's Federal Register on October 22, 2004.

TFR - Federal Court of Appeals

TRF - Regional Federal Court

STF - Supreme Court

STJ - Supreme Court of Justice